IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3025 OF 2006

Nandkishor Chandrakant Rahatekar ..Petitioner
Vs.
State of Maharashtra and ors. ..Respondents

Mr. R.K. Mendadkar for petitioner.
Mr. R.D. Rane, Govt. Pleader for respondent nos.1 and 3.
Mr. R.G. Ketkar for respondent no.2.

CORAM: B.H. MARLAPALLE & J. H. BHATIA,JJ.

Date : December 04, 2006.

P.C.:

1. Heard Mr. Mendadkar the learned counsel for the petitioner who is an employee of the Pune Municipal Corporation. The petitioner claims that he belongs to caste "Tirmal" which is a Nomadic tribe in the State of Maharashtra. His caste claim was invalidated by the competent scrutiny committee i.e. respondent no.3 by its decision dated 25/5/2004 and, therefore, he had approached this court in Writ Petition No.6313 of 2004. The said petition was disposed off in terms of the minutes of order dated 7/10/2004. The minutes of order read as under:-

> "1. Rule. By consent rule is made returnable forthwith.
>
> 2. By consent, impugned order dated 25/5/2004 passed by Respondent No.2 & Communication dated 5/6/2004 issued by Respondent No.3 are quashed & set aside. The case of the petitioner is remitted back to Respondent No.2 for fresh consideration in accordance with law, preferably within 6 months.
>
> 3. The parties are at liberty to produce documents. All contentions of parties are kept open.
>
> 4. In case, the decision of Respondent No.2 goes adverse to the petitioner, the same will not be given effect for a period of 4 weeks from the date of service upon the petitioner.
>
> 5. With above directions, petition is disposed."

2. The respondent no.3, therefore, reopened the petitioner's tribe's claim and by a fresh decision dated 22/3/2006 again held that the petitioner does not belong to "Tirmal Nomadic Tribe" and the caste certificate dated 29/9/1981 issued to that effect by the Special Executive Magistrate, Nagpur was held to be invalid. This order in the second round has been challenged by the petitioner.

3. We have heard Mr. Mendadkar the learned counsel for the petitioner and perused the reasoning set out in the fresh order dated 22/3/2006 passed by the respondent no..3-committee it is evident that the petitioner failed to appear before the respondent no.3-committee on remand and this refusal on behalf of the petitioner to appear before the Committee emanates from his belief that it was respondent no.2-corporation who was directed to consider his case and the Committee had nothing to do with the issue and that its earlier decision was set aside. We find no force in these contentions. Writ Petition No.6313 of 2004 was disposed off on the minutes of order signed by the petitioner's learned counsel as well as the learned AGP and the respondent no.2-corporation was not represented though it was a party. In the said minutes of the order there was a typing mistake in as much as instead of "respondent no.3", it was stated "respondent no.2" and this typographical mistake was not pointed out to this court at any time by the learned counsel for the petitioner or the learned AGP. We are, therefore, satisfied that while setting aside

the earlier decision dated 25/5/2004 the respondent no.3-committee was called upon to re-adjudicate on the petitioner's tribal claim. We are also satisfied that the documents submitted by the petitioner as well as vigilance inquiry report have been duly considered by the committee and its finding that the petitioner does not belong to "Tirmal Nomadic Tribe" does not call for any interference.

4. Mr. Mendadkar the learned counsel for the petitioner further submitted that the petitioner has given up his claim of Nomadic tribe and he only wanted his representation dated 10-10-2006, a copy of which has been placed before us, to be considered and decided by the respondent no.2-corporation on the basis of the GR dated 30/6/2004. Clause-A of the said GR reads as under.

> "A. Those non-tribals who have obtained Government or Semi-Government service or promotion on the post reserved for scheduled tribe before 15th June, 1995, should not be terminated from service or reverted. They should be shown to the category to which they belong. The are entitled henceforth to the benefits of reservation of respective

> categories. As such the posts falling vacant should be filled in from the scheduled tribe."

5. The term "Scheduled Tribes" has been defined under Article 366 (25) which means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution.

6. It is thus clear that the GR dated 30/6/2004 as relied upon by the petitioner is applicable to the scheduled tribes and the petitioner’s claim that he belongs to "Tirmal Nomadic Tribe" has been negatived by the respondent no.3-committee. Under these circumstances, it is for the corporation to decide whether the said GR is applicable to the petitioner or not. Mr. Ketkar the learned counsel appearing for the respondent no.2-corporation also referred to Section 10 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special

Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. We need not deliberate on this issue of the petitioner's representation referred to hereinabove and it is entirely for the respondent no.2-Corporation to consider the same on its own merits and as per law. However, such a decision be taken as expeditiously as possible and preferably within a period of eight weeks from today.

7. Save and except the above directions, the petition stands rejected summarily.

(J.H. Bhatia, J.) **(B.H. Marlapalle,J.)**